

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2010-252-C - ORDER NO. 2010-808
DECEMBER 10, 2010

IN RE: Application of Crexendo Business Solutions, Inc. for a Certificate of Public Convenience and Necessity to Provide Interexchange and Local Exchange Telecommunications Services and for Alternative Regulation and Flexible Regulation) ORDER VACATING) PRIOR DIRECTIVE AND) ALLOWING) WITHDRAWAL OF) APPLICATION WITHOUT) PREJUDICE
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This matter comes before the Public Service Commission of South Carolina (“Commission”) on the motion of Crexendo Business Solutions, Inc. (“Crexendo” or “the Company”) to vacate the directive of November 10, 2010 in this Docket. The Company further moves to be allowed to withdraw its Application without prejudice. Crexendo also moves that the Application and all attendant documents filed in this Docket on the Commission’s Docket Management System (DMS) be removed therefrom. Because of the reasoning below, we grant vacation of the directive of November 10, 2010, and we hold that the Company should be allowed to withdraw its Application without prejudice. However, we deny so much of the motion that requests removal of materials from the DMS at this time, subject to one condition.

The Company filed an Application for authority to provide local and interexchange telecommunications services. After an October 18, 2010, hearing before Hearing Examiner David Butler, this Commission issued a directive on November 10, 2010, which denied the Application. Both the Company and the Office of Regulatory

Staff filed subsequent documents requesting vacation of the directive, and requesting that they be given the opportunity to respond to a proposed order which would be furnished by the Hearing Examiner prior to this Commission again ruling on the merits of the case. Subsequently, however, Crexendo, with no objections from the other parties to the case, filed a substitute motion requesting the following relief: 1) that the Commission Directive of November 10, 2010 be vacated; 2) that the Company be permitted to withdraw its Application without prejudice; and 3) that the Application and all attendant documents filed in this case on the Commission's Docket Management System (DMS) be removed therefrom.

S.C. Code Ann. Section 58-3-225 (E) (Supp. 2009) states as follows:

A party may withdraw its petition, application, complaint, counterclaim, cross-claim, or third-party claim from any commission docket one time as a matter of right, and without prejudice, provided that it does so prior to the later of the date that responsive pleadings are filed or the date that the withdrawing party's direct testimony addressing such petition, application, complaint, counterclaim, cross-claim, or third-party claim is due to be filed with the commission. **A party may thereafter withdraw its petition, application, complaint, counterclaim, cross-claim, or third-party claim from any commission docket only upon order of the commission and upon such terms and conditions as the commission considers proper (emphasis added).**

We have examined the present Docket, and have no issue in this case with Crexendo's motion to be allowed to withdraw its Application without prejudice at this time. We note that there is no opposition from any party. Crexendo shall be allowed to withdraw its Application without prejudice, and Crexendo is hereby deemed to have withdrawn its Application without prejudice. Logically then, the directive issued on November 10, 2010, must be, and is hereby vacated.

The request to remove the Application and all attendant documents in this case from the Commission's DMS, is, however, somewhat problematic, since documents filed with this Commission are subject to the Freedom of Information Act (FOIA), found in S.C. Code Ann. Section 30-4-10, *et seq.* S.C. Code Ann. Section 30-4-15 states, in part, that "provisions of the chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings." Further, S.C. Code Ann. Section 30-4-20 (c) defines "public record" as including "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials ... in the possession of, or retained by a public body." Although certain exceptions to the definition of "public record" are also contained in the FOIA, it is clear that, unless a document comes under one of these exceptions, the materials filed on the DMS clearly constitute a "public record," subject to the Freedom of Information Act.

Accordingly, we hold that unless and until Crexendo can present evidence that the materials that it seeks to have removed from the Docket Management System come under one or more of the exceptions to the FOIA and would therefore be entitled to confidential treatment, we must deny the portion of Crexendo's motion which seeks removal of the materials from the DMS. Because of this reasoning,

IT IS THEREFORE ORDERED:

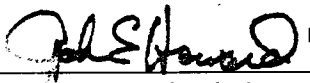
1. That the Application in this Docket is hereby deemed withdrawn, without prejudice;
2. That the Directive issued November 10, 2010, is hereby vacated;

3. That the portion of the motion requesting removal of the Application and all attendant documents from the Commission's Docket Management System is hereby denied, unless and until such time as the Company presents evidence that this information, or any portion thereof, is entitled to confidential treatment by virtue of it falling under one or more exceptions to the "public" declaration of documents under the Freedom of Information Act;

4. That any outstanding motions remaining in this Docket not ruled upon in this Order are hereby declared to be moot;


5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



John E. Howard, Chairman

ATTEST:



David A. Wright, Vice Chairman

(SEAL)